

**These are the terms and conditions (the “Terms of Business”) of Bournemouth University which apply to the work we do for you. Each of you and us is a “party” and together the “parties”.**

**All other terms and conditions, including terms or conditions that you purport to apply under any purchase order, confirmation of order, specification, invoice or other document, or by implication through, custom, practice or course of dealing, are expressly excluded.**

**The following definitions apply to the Contract unless stated otherwise in the Agreement Letter:**

**Agreement Letter:** the letter we issue to you which accompanies these Terms of Business and including the schedules attached and referred to in the letter;

**Associate:** as defined in section 435 of the Insolvency Act 1986;

**Background IPR:** Intellectual Property Rights that are provided by a party for use in relation to the Services (whether before or after the date of the Contract), except any Foreground IPR;

**Bournemouth University, BU, we, us, our:** Bournemouth University Higher Education Corporation of Poole House, Talbot Campus, Fern Barrow, Poole, BH12 5BB;

**Business Day:** a day (other than a Saturday, Sunday or bank holiday) when the banks in London are generally open for business;

**Contract:** the Terms of Business together with the Agreement Letter;

**Deliverable, Deliverables:** all documents, products, materials or media in any form including without limitation, drawings, maps, plans, diagrams, designs, pictures, computer programs, data, timetables, case studies, specifications, and reports which we produce as part of the Services and are as set out in the Agreement Letter;

**Foreground IPR:** all Intellectual Property Rights identified, first reduced to practice or recorded (by any means) in providing the Services;

**Intellectual Property Rights, IPR:** patents, trade marks, service marks, registered designs, copyrights, database rights, design rights, know how, rights in confidential information, applications for any of the above, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above;

**Services:** the services described in the Agreement Letter;

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement or additional tax;

**You, your:** our client as set out in the Agreement Letter.

**Your attention is particularly drawn to the provisions of clause 2.5 and clause 7.**

## 1. Our Services

**1.1 Timetable** Where a timetable is referred to or set out in the Agreement Letter, the parties shall use reasonable endeavours to carry out their respective obligations in accordance with the timetable. However, unless the parties specifically agree otherwise in the Agreement Letter, dates contained in the timetable, including completion dates, are intended for planning and estimating purposes only and are not contractually binding. Time is not of the essence for any obligation in the Contract.

**1.2 Services** We shall deliver the Services with reasonable skill and care. Where individuals to be involved in delivering the Services are named in the Agreement Letter, we shall use reasonable endeavours to ensure that they are so involved. We may substitute those identified for others of equal or similar skills and where practicable we shall consult you before doing so.

**1.3 Changes to Services** Either party may request changes to the Services or changes to any other aspect of the Contract. Requests for changes must be sufficiently detailed to enable the other party to assess the impact of the requested change on the cost, timetable or any other aspect of the Contract. We and you agree to work together to consider and, if appropriate, agree any changes. Until a change is agreed in writing and signed by both parties, the change shall not be valid and the parties will continue to act in accordance with the latest agreed version of the Contract.

**1.4 Contract Management** Each party will name a contact who will be responsible for managing all issues relating to the performance of the Contract.

## 2. Intellectual Property Rights, Acceptance and Use

**2.1 Intellectual Property Rights** Ownership of all Background IPR shall remain with the party providing that Background IPR or, where applicable, the third party from whom that party's right to use the Background IPR has derived.

Where you provide any Background IPR to us for use in relation to the performance of the Services you agree to grant us, or to ensure that the third party owner of the Background IPR grants us, a non-exclusive licence to use the Background IPR for the purpose of performing the Services.

Ownership of all Foreground IPR shall vest in Bournemouth University.

Subject to payment in full of the Fees and to the provisions of clause 5.7, we shall grant to you: (i) a non-exclusive licence to use and exploit all Foreground IPR; and (ii) a non-exclusive licence to use and exploit the Background IPR provided by us which is freely licensable and which is necessary solely for the purpose of using or exploiting the Foreground IPR.

**2.2 Acceptance** Acceptance of the Services will be deemed to take place five Business Days after receipt unless you have notified us in writing that they are not acceptable and state why they are not acceptable. If you notify us in accordance with this clause that the Services do not conform with the Contract in any material respect, we will use reasonable endeavours to modify them to meet the Contract requirements within a reasonable period of time. You shall have no other remedy until the end of that reasonable period.

**2.3 Freedom to Use Ideas** We and our Associates shall be entitled to use or develop knowledge, experience and skills of general application gained through performing the Services, including use for other clients and whether or not reflected in any of the Deliverables, subject to our not being in breach of our confidentiality undertaking under clause 6.1 below.

**2.4 Draft Reports and Draft Letters** Any drafts that we may provide to you will not constitute our definitive opinion and conclusions on any issues, matters or queries. Our opinions and conclusions will be contained solely in a final written Deliverable.

**2.5 Implementation** We will not have any control over how you implement the Deliverables in your systems, working processes or products and therefore we shall have no liability, whether in contract, tort (including without limitation negligence), breach of statutory duty or otherwise in relation to the use of the Deliverables by you or any other person, or the consequences of such use, and you shall indemnify us and our employees, agents and representatives against all such liability and claims arising from such use. You acknowledge and accept that this indemnity is reasonable as we do not control your interpretation and implementation of the Deliverables.

### **3. Your Responsibilities**

**3.1 Responsibilities** Our performance is dependent on you carrying out your responsibilities as set out in the Contract.

**3.2 Support Facilities** When it is agreed that we will undertake some or all of the Services at your premises you will use your reasonable endeavours to provide us and our staff with all office and other accommodation and facilities that we may reasonably require to perform the Services including, in particular, secretarial support, access to telephone and fax communications, computer facilities and internet access. You will obtain all third-party consents necessary to permit us to use any software or any other proprietary information or property of any third party which you provide to us. You will be responsible for ensuring that all facilities provided comply with all prevailing legislation, including all legislation relating to the health and safety of personnel.

**3.3 Computer and Data Security** You will be responsible for ensuring that you have appropriate back-up security and virus-checking procedures in place for any computer facilities you provide. We agree to comply with your reasonable virus-checking procedures relating to such facilities which you notify to us in writing. You shall also be responsible for ensuring the confidentiality and security of any personal data processed in connection with the performance of the Services using your facilities.

**3.4 Information and Materials** You agree to use your reasonable endeavours to provide us on a timely basis all information and materials reasonably required to enable us to provide the Services. You agree that all information disclosed or to be disclosed to us is or will be true, accurate and not misleading in any material respect. We will rely on, and we will not independently verify, the accuracy and completeness of the information you supply to us. You are responsible for informing us of any changes to the information originally presented to us.

**3.5 Your Staff** To enable us to provide the Services you will use your reasonable endeavours to ensure that your staff are available to provide such assistance as we reasonably require and that we are given reasonable access to senior management, as well as to any members of your staff specified in the Agreement Letter.

**3.6 Suppliers and Other Third Parties** Where you are using third parties to provide information or support to a project including, but not limited to, where you are contracting with other suppliers whose work may affect our ability to provide the Services, you will be responsible for the management of the third parties and the quality of their input and work.

**3.7 Payment for Services** You agree to pay for the Services as set out in the Agreement Letter and clause 4 below.

### **4. Fees and Payment**

**4.1 Basis of Fees** Fees for the Services will be charged on the basis set out in the Agreement Letter. Where the Agreement Letter does not state the basis on which our fees will be charged, our fees will reflect time spent and factors such as complexity, monetary values and specialist input, and will take into account urgency and inherent risks and the use of techniques, expertise, research and know-how developed within Bournemouth University.

If the Services are provided for a period in excess of six months we reserve the right to vary the basis of the fees chargeable to take account of variations in our costs, inflation and other economic factors. We will give you at least 30 days written notice of such variations to our charging basis. Where you do not agree to such increase, either party shall be entitled to terminate the Contract upon 30 days written notice.

**4.2 Travel** If our staff are required to work away from home for extended periods, we will have flexibility in the way we divide their time between your sites and their home base. Travel time, other than time spent travelling from a local residence to the normal place of work, may be charged at our standard hourly rates.

**4.3 Fee Estimates** Any fee estimate given by us, whether for planning or other purpose is given in good faith but is subject to the stated caveats and assumptions and to any factors outside our control and is not contractually binding. The fee estimate is valid for 30 days from the date of the estimate. We will notify you if it reasonably becomes apparent that the estimate is likely to be materially exceeded.

**4.4 Expenses** All fees are exclusive of expenses unless the Agreement Letter states otherwise. You agree to pay our travel, accommodation, subsistence and other reasonable expenses incurred in connection with the Services. We will charge for document handling (secretarial, photocopying, printing, fax, courier or special mail deliveries, etc.) and other out of pocket expenses incurred in connection with the Services.

**4.5 Taxes** Fees, including expenses, are exclusive of any taxes. You will be responsible for paying any taxes arising from the Contract for which you are legally liable, such as VAT at the applicable rate.

**4.6 Invoicing Details** With each invoice we will provide a description of the Services charged for.

**4.7 Periodic Charging** We will invoice you as stated in the Agreement Letter or if nothing is stated in the Agreement Letter we reserve the right to invoice monthly.

**4.8 Payment of Invoices** All fees will be specified in Pounds Sterling and invoices will be paid in that currency, unless otherwise agreed. All invoices will be due for payment within 30 days of the date of the invoice. Any queries concerning an invoice should be raised within seven days of the invoice date with any undisputed amounts remaining payable by the due date. In the event of late payment we reserve the right to suspend the provision of the Services and to charge interest on amounts overdue in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and its subordinate legislation (as amended from time to time) until the actual date of payment (both before and after judgment).

### **5. Duration and Termination**

**5.1 Duration of Contract** The Contract will come into effect on the earlier of:

- (i) signature of the Agreement Letter by the last party; and
- (ii) our start of work on any Services that are referable to the Contract.

Unless terminated earlier under the terms below, the Contract will continue until the later of the end of the period stated in the Agreement Letter and the delivery and acceptance of all of the Services. Termination shall be without prejudice to the parties' respective accrued rights and remedies as at the date of termination.

- 5.2 Right to Terminate the Contract** Unless stated otherwise in the Agreement Letter, the Contract may be terminated by either party at any time by giving not less than 30 days written notice.
- 5.3 Termination for Breach of Contract** The Contract may be terminated by either party on written notice with immediate effect if the other commits a material breach of any term of the Contract which, in the case of a breach capable of being remedied, is not remedied within 30 days of a written request to remedy the same.
- 5.4 Termination for Insolvency** The Contract may be terminated by either party or written notice with immediate effect if the other party suspends or is unable to pay its debts as they fall due or has a receiver, administrator, administrative receiver or liquidator appointed or calls a meeting of its creditors or ceases for any other reason to carry on the business or any equivalent and/or similar event or effect in any jurisdiction or in the reasonable opinion of the other party any of these events appears likely.
- 5.5 Payments on Termination** Where either party terminates the Contract for whatever reason, you will pay us for all Services provided up to the date of termination, together with any contingent fee (if provided for in the Agreement Letter) or value due for payment as at the date of termination. Where you terminate the Contract under clause 5.2 or where we terminate the Contract under clauses 5.3 or 5.4 you shall reimburse to us all costs incurred by us in anticipation of future performance of the Services which would have been recoverable by us from you had the Contract not been terminated early (in so far as such costs have not already been covered by invoices raised prior to termination) together with any additional costs reasonably incurred by us as a result of the early termination of the Services, including but not limited to costs relating to subcontractors or relocation costs.
- 5.6 Return of Property** On the termination of the Contract each party will as soon as reasonably practicable return to the other party any property of the other that it then has in its possession or control, except that we may retain one copy of any documentation or software upon which our Services are based to enable us to maintain a record of our involvement and to exercise our rights hereunder.
- 5.7 Termination of Licences** Where we terminate the Contract under clause 5.3 or 5.4 all licences granted by us under clause 2.1 will automatically terminate.

## **6. Confidentiality**

- 6.1 Restriction on Disclosure of Confidential Information** Neither party will disclose to any third party, without the prior written consent of the other party, any proprietary or confidential information which is disclosed by a party to the other for the purposes of providing or receiving the Services whether orally, in writing or by any other means before or during the term of the Contract, including but not limited to the terms and conditions of the Contract, amounts payable under the Contract and information relating to the other party's Intellectual Property Rights and business affairs ("Confidential Information"). The parties agree that any Confidential Information received from the other party shall be used only for the purposes of providing or receiving Services under this, or any other, Contract between the parties. The Confidential Information may be disclosed to the parties' respective employees, agents, sub-contractors and consultants involved in the Services to the limited extent required for the performance of the Services, but the parties will make their respective employees, agents,

sub-contractors and consultants to whom such Confidential Information is disclosed aware of the restrictions on disclosure contained in this clause 6.

These restrictions will not apply to any information which:

- (i) is or becomes generally available to the public other than as a result of a breach of an obligation under this clause; or
  - (ii) is acquired from a third party who did not, to the recipient's knowledge, acquire it in confidence directly or indirectly from the disclosing party; or
  - (iii) is or has been independently developed by the recipient without recourse to the Confidential Information of the other party; or
  - (iv) the recipient can show, by written evidence, was known to it prior to receipt; or
  - (v) is contained in these Terms of Business.
- 6.2 Disclosure Required by Law** Notwithstanding clause 6.1 above, a party will be entitled to disclose Confidential Information of the other, to the limited extent required to:
- (i) the party's insurers or legal advisors; or
  - (ii) a third party to the extent that this is required by any court of competent jurisdiction, or by a governmental or regulatory authority, or where there is a legal right or duty to disclose, provided that (and without breaching any legal or regulatory requirement) and where reasonably practical, not less than two Business Days notice in writing is first given to the other party.
- 6.3 Other Disclosure and Use** Notwithstanding clause 6.1 we may disclose any information referred to in this clause 6 to any of our Associates and we and they may use it for internal purposes.
- 6.4 Citation of Services** Notwithstanding clause 6.1, we may disclose the existence, but not the content, of the Contract to our clients and prospective clients and in our publicity and marketing materials as an indication of our experience.
- 6.5 Freedom to Publish** All our employees, students, agents or appointees shall have freedom to publish in accordance with normal academic practice and freedom to discuss the Services in seminars, and in pursuance of our academic functions subject to our not being in breach of our confidentiality undertaking under clause 6.1.
- 7. Warranties and Limitations of our Liability. Your attention is particularly drawn to this clause.**
- 7.1 General** We do not provide any warranty, guarantee or assurance, either express or implied, that the Services or Deliverables will achieve any result, outcome, value or return on investment. Any figures quoted by us are estimates only.
- 7.2 Acceptance & Limitation of Liability** Nothing in the Contract will be taken to limit or exclude our liability for:
- (i) death or personal injury caused by our negligence or the negligence of our employees acting in the course of their employment;
  - (ii) liability for fraudulent misrepresentation; and
  - (iii) any other liability which by law we cannot exclude or limit.
- 7.3** Unless expressly provided in the Agreement Letter, in the provision of the Services we will not be liable to you in contract, tort (including without limitation negligence) breach of statutory duty or otherwise for any loss or damage which you may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by us, our servants or our agents in a sum which is greater than the Contract fees actually received by us under the Contract.



- 7.4 We will not be liable to you in contract, tort (including without limitation negligence), breach of statutory duty or otherwise for any loss of profits and/or loss of production and/or loss of expectation and/or loss of opportunity or any indirect or consequential (including, but not limited to, economic) loss of any kind which you may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by us, our staff, our sub-contractors, our consultants or our agents.
- 7.5 If our performance and timing of our obligations under the Contract is prevented or delayed by your act, omission, non-performance or otherwise or that of your agents, subcontractors, consultants or employees, we shall not be liable for any costs, charges or losses sustained or incurred by you that arise directly or indirectly from such prevention or delay.
- 7.6 The Contract sets out the full extent of our obligations and liabilities in respect of the supply of the Services and Deliverables. All conditions, warranties or other terms concerning the Services and Deliverables which might otherwise be implied into the Contract are hereby expressly excluded to the fullest extent permitted by law.
- 8. Electronic Mail (“email”) Communications**
- 8.1 General** During our performance of the Contract we may wish to send messages and/or documents to you by email. Accordingly, unless you notify us otherwise, we shall regard your acceptance of these Terms of Business as including your consent to use email in all communications between the parties except as excluded by clause 10.5.
- 9. Governing Law**
- 9.1 Applicable Law** The Contract shall be subject to and governed by English law and any disputes arising from or under it, including in relation to its formation, shall be subject to the exclusive jurisdiction of the English courts.
- 9.2 Resolving Disputes** Should any dispute arise between the parties, the parties will in the first instance attempt to resolve the dispute in good faith by senior level negotiations. Where the parties agree that it may be beneficial the parties will seek to resolve the dispute through mediation.
- 9.3 English Language** The Contract is drafted in the English language. If any part of the Contract is translated into any other language, the English language text shall prevail.
- 10. General**
- 10.1 Sub-Contracting** We reserve the right to employ agents and sub-contractors. Any reference to our staff in the Contract includes agents and sub-contractor staff. Subject to clause 7, we will remain liable to you in respect of any Services provided by our agents and sub-contractors.
- 10.2 Force Majeure** Neither party will be liable to the other party for any delay in the performance of (other than as to payment) or failure to fulfil their obligations under the Contract to the extent that any such delay or failure arises from causes beyond that party’s control, including but not limited to fire, floods, acts of God, acts or regulations of any governmental or supranational authority, war, riot, strike, lockouts and industrial disputes.
- 10.3 Assignment** Neither party may assign, transfer, charge or otherwise seek to deal with any of its rights or obligations under the Contract without the prior written consent of the other party, such consent not to be unreasonably withheld.
- 10.4 Waiver** The delay by a party in enforcing any of the terms or conditions of the Contract will not affect or restrict a party’s rights and remedies arising under the Contract. No waiver of any term or condition of the Contract will be effective unless made in writing and signed by the party so waiving.
- 10.5 Notices** Notices must be in writing, in the English language and served either personally or sent by prepaid registered post to the address of the other party given in the Contract or to any other address as the parties may have notified during the period of the Contract. Any notice sent by prepaid registered post will be deemed to have been delivered 48 hours after sending. Any notice served personally will be deemed to have been delivered at the time the notice is left at the proper address. A notice required to be given under the Contract shall not be validly served if sent by email and/or fax.
- 10.6 Variation** No variation of the Contract shall be valid unless it is in writing and signed by both parties.
- 10.7 Survival** The provisions of clauses 2 (Intellectual Property Rights, Acceptance and Use) (subject always to clause 5.7), 5 (Duration and Termination), 6 (Confidentiality), 7 (Warranty and Limitations of our Liability), 9 (Governing Law), 10.3 (Assignment), 10.5 (Notices), 10.8 (Offer of Employment) and any other provision of the Contract which by implication is intended to survive termination or expiry of the Contract will survive and continue to bind the parties.
- 10.8 Offer of Employment** Neither party will during the period of the Contract and within six months of its termination or expiry solicit directly or indirectly any employees of the other who have been involved in providing or receiving Services or were otherwise connected with the Contract, except those employees who have been involved on a purely administrative or secretarial basis or with the prior written consent of the other party. In the event that you should engage the services of one or more of our employees engaged on the Services or otherwise connected with the Contract then you shall pay us a fee equivalent to six months basic gross salary of that or those person/s so employed. Employing persons who forward an unsolicited response to a general advertising or other general recruitment campaign shall not constitute a breach of this clause 10.8.
- 10.9 Entire Agreement** The Contract forms the entire agreement between the parties relating to the provision of the Services. It replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral. The headings and titles in the Contract are included to make it easier to read but do not form part of the Contract or affect its interpretation.
- 10.10 Agreement Letter to take Precedence** In the event of and only to the extent of any conflict between these Terms of Business, the Agreement Letter and/or any schedules referred to in, and attached to, the Agreement Letter, the conflict shall be resolved in accordance with the following order of precedence:
- (i) Agreement Letter without the schedules attached and referred to in the Agreement Letter;
  - (ii) any schedule attached and referred to in the Agreement Letter (and if more than one in order of attachment);
  - (iii) Terms of Business.
- 10.11 Third Party Rights** For the avoidance of doubt, nothing in the Contract shall confer on any third party any benefit or the right to enforce any provisions of the Contract.
- 10.12 Severance** If any court of competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.